

## REMARKS

Applicant hereby respectfully submits the above amendment. Claims 57 – 61, 90 – 91, 94, and 100 – 103 are canceled without prejudice. Claims 88 – 89, 92 – 93 and 95 – 99 are amended. New claims 104 – 117 are added. No matter is added into the amended claims 89, 92 – 93 and 95 – 99. Support for the amended claim 88 and newly added claims 104 – 117 can be found, *inter alia*, as follows:

| <b>Independent Claim</b> | <b>Support</b>  | <b>Feature</b>  |
|--------------------------|---|---|
| 88 (Amended)             | p. 31, lns 28-31  | reducing or preventing undesirable elevation of reactive oxygen species...            |
|                          | p. 28, ln. 31 – p. 29, ln. 1;<br>p. 55, ln. 4 – p. 56, ln. 9  | upregulating SOD and CAT  |
|                          | Claims 88-103 as filed  | method for preparing a dietary supplement   |
|                          | p. 34, lns. 3-5   | pharmaceutical composition  |
|                          | p. 34, lns. 6-8   | .... in a mammal...   |
|                          | p. 2, lns. 13-14  | upregulating GST-Px   |
|                          | p. 34, lns. 3-5   | suitable vehicle.   |
|                          | p. 41, ln. 27; p. 41, ln. 31;<br>p. 41, ln. 5   | 7 amino acids   |
|                          | p. 41, lns. 20-21 (SEQ ID NOs: 2 and 13); claim 72 (SEQ ID NOs: 5, 21, 22 and 23); p. 41. p. 17, lns. 26-28 | fewer than 7 amino acids  |
| 110 (new)                | p. 30, lns. 28-31;  | method of treating or preventing a disease...   |
|                          | p. 32, lns. 26-29   | elevated levels of reactive oxygen ...<br>administering to an individual suffering... |
|                          | p. 41, ln. 27; p. 41, ln. 31;<br>p. 41, ln. 5   | 7 amino acids   |
|                          | p. 41, lns. 20-21 (SEQ ID NOs: 2 and 13); claim 72 (SEQ ID NOs: 5, 21, 22 and 23); p. 41. p. 17, lns. 26-28 | fewer than 7 amino acids  |
|                          | p. 2, lns. 13-14  | upregulating GST-Px   |
|                          | p. 28, ln. 31 – p. 29, ln. 1;<br>p. 55, ln. 4 – p. 56, ln. 9  | upregulating SOD and CAT  |
| <b>Dependent Claims</b>  |   |   |
| 104 (new)                | p. 17, lns. 26-28   | fewer than 6 amino acids  |
| 105 (new)                | p. 17, lns. 26-28   | fewer than 5 amino acids  |

|           |  |  |
|-----------|--|--|
| 106 (new) | p. 10, lns. 17-21; p. 34, lns. 3-5   | excipient, salt, .... purified from a natural source |
| 107 (new) | claims 100 and 101 as originally filed   | green velvet antler, deer and elk.                   |
| 108 (new) | claim 102 as originally filed  | plants and microorganisms                            |
| 109 (new) | p. 30, lns. 16-17; p. 49, Example 3; p. 28, ln. 31 – p. 29, ln. 1; p. 55, ln. 4 – p. 56, ln. 9 | upregulating SOD, CAT and GST-Px                     |
| 111 (new) | p. 15, lns. 13-19; p. 16, lns. 2-9   | selected from the group consisting of ...            |
| 112 (new) | p. 17, lns. 26-28  | fewer than 6 amino acids                             |
| 113 (new) | p. 17, lns. 26-28  | fewer than 5 amino acids                             |
| 114 (new) | claim 67 as originally filed   | a group consisting of Asp-Gly-Asp...                 |
| 115 (new) | claim 3 as originally filed  | SEQ ID NO:3  |
| 116 (new) | p. 7, ln. 17   | Asp Gly Asp Gly Asp Phe Ala                          |
| 117 (new) | p.6, lns. 4-7  | a group consisting of Asp-Gly-Asp...                 |

Thus, no new matter has been added by this amendment. After amendment, claims 1 – 56, 62 – 89, 92 – 93, 95 – 99, 104 – 117 are currently pending.

The Office Action mailed July 25, 2003 has examined originally-filed claims 1-103 for restriction purposes only. The Office Action stated that there are 208 independent invention groups, *i.e.*, that the number of independent inventions exceeds the number of claims by two fold.

Applicant respectfully points out that the Office Action of July 25, 2003 does not conform to the requirements of M.P.E.P. § 803.02 as regards originally filed claims. The M.P.E.P. states:

Since the decisions in *In re Weber* and *In re Haas* [cites omitted], it is improper for the Office to refuse to examine that which that applicants regards as their invention, unless the subject matter in a claim lacks unity of invention.

The Office Action at page 4, first full paragraph states that:

[O]verlapping sequences have been selected for inventions 1-26 and the peptide sequences in each of inventions 1-26 are considered to be patentably distinct. If anyone of inventions 1-26 is elected, the elected invention will only be examined insofar as it pertains to the sequences listed therein.

The meaning of “patentably distinct” is discussed in the M.P.E.P. § 802.01, where inventions are regarded as patentably distinct if each is patentable, *i.e.*, novel and non-obvious, over the other. Applicant respectfully submits that the Office Action is improper inasmuch as it applies a patentably-distinct criterion where a unity-of-invention standard is proper.

In particular, the Applicant submits that the restriction of claims based on the examples of peptide fragments provided in the application would not have been proper under a unity-of-invention standard. This is illustrated by the example of claim 88, which, according to the Office Action of July 25, 2003, is subject to restriction based on different peptide sequences. *See* Page 8 of the Office Action of July 25, 2003. As originally filed, claim 88 reads as follows:

“A method of making a dietary supplement composition comprising:  
purifying a composition from a natural source obtained from an organism comprising an endogenous peptide compound, wherein said endogenous compound upregulates expression of at least one gene encoding an antioxidative enzyme.”

This is a genus claim, relating to a novel method of preparing a composition useful for upregulating expression of at least one gene encoding an antioxidative enzyme. This claim is supported by many examples provided in the application. However, as filed, claim 88 does not recite a particular peptide fragment or sequence, nor is it limited to the specific examples presented in the application. Following the teachings of the application, a person of ordinary skills in the art should be able to identify other peptide fragments applicable in the claimed invention. Thus, claim 88 draws to a single general inventive concept regarding a novel method of preparing a composition. Pursuant 37 C.F.R. § 1.475, “unity of several inventions is present where the inventions are linked as to form a single general inventive concept”. Therefore, it is improper to restrict a single inventive concept, such as claim 88, based on the number of examples used to support the concept. For the same reasons stated above, the Applicant further submits that it is also improper to restrict claims 25-28, 29-34, 35-39, 40-51, 62-69, 52-56, 57-61 and 88-103 based on the examples of peptide compounds provided in the application. Thus, Applicant respectfully traverses the restriction requirement.

With traversal, Applicant provisionally elects Group 185, which correlates to the originally filed claims 88-103 drawing to the sequence group identified as Group 3. After amendment, Group 185 draws to a method for preparing a composition useful for reducing or preventing undesirable reactive oxygen species in a mammal.

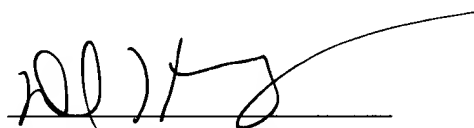
Applicant further notes that the newly added claims 104 – 109 all depend on claim 88 (amended). Similar to claim 88, the newly added claims 104 – 109 all draw to the same inventive concept regarding a method for preparing a composition useful for reducing or preventing undesirable elevation of reactive oxygen species in a mammal. Therefore, Applicant respectfully submits that the amended claim 88 and the newly added claims 104 – 109 conform to the requirement for unity of invention in that all the claims are linked by a single general inventive concept, and should be examined together.

No fee is required by this amendment. However, in the event that any fee is required, the Commissioner is hereby authorized to charge such fees, which may be required, or to credit any overpayment, to Deposit Account No. 02-4270.

In the event that the Examiner has any further concerns, Applicant requests a call to be made to Applicant's attorney at the number listed below.

Respectfully submitted,

Dated: 12. Nov 2003



Daniel Hansburg, Esq.

Reg. No. 36,156

Brown Raysman Millstein Felder & Steiner LLP

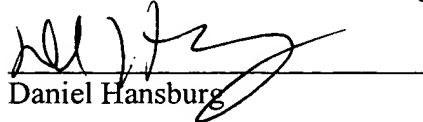
900 Third Avenue

New York, New York 10022-4728

Telephone: (212) 895-2070

Telefax: (212) 895-2900

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12. Nov. 2003  
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